

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

November 21, 2003

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on November 21, 2003 at the offices of Reed, Smith, Crosby, Heafey in Oakland, California and by video conference at the Los Angeles offices of Reed, Smith, Crosby, Heafey.

The following members attended the meeting in person, by video conference or by telephone:

Geraldine Valdez
Peter Bronson
Radmila Fulton
Mike Buckley
Lisa Fenning
David Shemano
Molly Baier
Elizabeth Berke-Dreyfuss
Bob Franklin
Mark Porter
Paul Pascuzzi
Judy Gibbs
Eve Karasik
Howard Kollitz
Sandy Lavigna
Dan Schechter
Russell Clementson
Lynn Ernce
Donna Parkinson
Cliff Stevens
Ben Young (as Ex Com liason)

The following members did not attend the meeting: David Bertenthal, Brian Davidoff, Michael Koch, Greg Lunt, Eric Sagerman, Tracy Schweitzer, and Colin Wied.

Geraldine Valdez called the meeting to order at approximately 11:00 a.m.

1. Approval of Minutes: October 16, 2003.

The minutes of the October 16, 2003 meeting were approved.

2. Membership.

Nothing new to report.

3. Meeting Schedule.

The Committee discussed the 2003-2004 meeting schedule. To avoid conflicts with Ex Com meetings, the following adjustments were made: February 19, 2004; April 23, 2004; June 25, 2004; July 23, 2004. A revised schedule will be circulated at the next meeting.

4. Budget.

Geraldine Valdez will revise/draft the 2003-2004 budget. Mark Porter will provide Geraldine with the cost of video conferencing from the October meeting for the budget.

5. Subcommittee—Revised Assignments.

Geraldine Valdez revised the assignments to the subcommittees pursuant to the discussion at the October meeting.

6. Programs and Education Subcommittee Report.

Radmila Fulton briefed the Committee on the status of the programs for the Winter SEI, the State Bar 2004 Spring Meeting, and the October 2004 Annual Meeting. For the Winter SEI, Radmila confirmed that Geraldine Valdez, Peter Bronson and Judge Mund are presenting a Bankruptcy 101 program. The State Bar 2004 Spring Meeting is being held on the same dates as the California Bankruptcy Forum, so ILC will not be putting on a bankruptcy program. Lisa Fenning and Sandy Lavigna offered to participate on a panel presenting UCC Article 9 issues, but the UCC chair was not aware of that. Geraldine and Radmila will follow up. For the October 2004 Annual Meeting, Mark Porter is working on a presentation on asset sales under Bankruptcy Code Section 363. The Committee discussed a second program possibly on secret liens or bankruptcy fraud for the October 2004 Annual Meeting. After some discussion, the Committee decided that bankruptcy fraud targeted at a general audience would be best. Russell Clementson will begin work on examples of acceptable and unacceptable pre-bankruptcy planning for the program. The Committee decided to save a presentation involving Enron-type fraud, with Sandy's expertise and connections, for a more appropriate audience.

7. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee.

Bob Franklin reported that the ILC website migration is complete. Bob noted that the Committee should revise the webpage content to update it. All of the minutes up to September 2003 are posted on the webpage. The Committee determined that the Secretary shall email the approved minutes to Bob for posting. Mike Buckley emailed the Committee with the updated webpage content and format. However, Mike did not receive any comments. If no further comments are received by December 31, Mike will

submit what he has. Bob will include the updated roster on the webpage materials so that all the new members are included. Any information for the educational programs that the Committee wants posted on the webpage should be given the Bob, who will forward to Mike Mullen at the State Bar for posting.

The Committee also discussed the status of the e-mail lists and reciprocal program announcements efforts:

- (a) Beverly Hills: Peter Bronson continues collecting and adding names.
- (b) Los Angeles: Sandy Lavigna is contacting the LA County Bar chair to attempt to obtain names.
- (c) Alameda/Contra Costa: Bob Franklin continues collecting and adding names.
- (d) Central California: Cliff Stevens put a request in the newsletter and has received a few names to add.
- (e) Sacramento and ABI: Lynn Ernce emailed the Sacramento County Bar and obtained approximately 40 names.
- (f) San Francisco: Mark Porter reported that he is sending emails to his contacts to obtain more names given that the San Francisco bar was not receptive to giving the Committee their list.

8. Legislation Subcommittee Report.

- (a) **Badges of Fraud ALP Status.** This project was to insert the common law badges of fraud back into the statute, but a sponsor for the legislation is needed. Judy Gibbs will follow up with Larry Doyle regarding his review of the ALP and search for a sponsor. The matter was tabled for next meeting.
- (b) **New Projects:**
 - i. Model Real Estate Order and Findings. The Committee reviewed and approved the new order and findings, which were separated into two documents per FRCP 58 and FRBP 9021. Judy Gibbs and Paul Pascuzzi drafted instructions for use of the order and findings, emphasizing that sufficient evidence must be submitted with the sale motion to obtain the extensive findings in the model. Judy has been unsuccessful in contacting the title company lawyers the Committee worked with in drafting the order and findings to obtain their approval of the separated forms. Donna Parkinson and Geraldine Valdez will follow up with title company lawyers in their firms to find out if we can get the new order and findings approved. The new order and findings, along with the instructions, will be emailed to Bob Franklin for posting on the webpage, with a notation that the Committee is in the process of attempting to obtain title company approval for the changes.

- ii. CCP § 697.350. This project deals with the problems of perfecting a California judgment lien against a foreign corporation. There is apparently no interest from the UCC Committee to consider changes to Article 9 to address the issue. Peter Bronson volunteered to explore whether other State Bar committees might be interested in this issue as well as the secret liens issues. At this point, it is premature to begin drafting an ALP for a proposed revision of Article 9.
- iii. CCP § 708.110 et seq. Peter volunteered to explore whether other State Bar committees might be interested in the secret lien issues.
- iv. H.R. 975 (Bankruptcy Reform Act). This matter was tabled for next meeting to see if there is any progress in the Legislature.

9. Publications Subcommittee Report.

The Committee discussed the topic for the mandatory article for the Business Law News. The problem of the last article prepared by Dan Schechter was discussed. Dan agreed to work on another annual review article. Geraldine will attempt to obtain assurances from the Executive Committee that the article would be published on a timely basis. The California Legislative Bulletin Annual Report was not discussed.

10. Legislative Subcommittee's New Bill Report.

At this time, there are no state bills of interest to the Committee. Mark Porter reported that he was asked to complete a survey on the use of assignments for the benefit of creditors. Mark will ascertain the proposed use of the survey results to determine whether the survey should be passed on to Committee members. Mark reported on S 832 which involves avoidance of payments to executives under certain circumstances in bankruptcy. A memorandum prepared by Mark and Paul Pascuzzi discussing S 832 was included in the materials. Mark is attempting to contact lawyers who deal with employee benefits to obtain their input on this proposed bill. As to HR 2120, S 1264, and S 1331, the Committee reported no further action on these bills. It was reported that the revisions to the Federal Rules of Bankruptcy Procedure were minor. The matter was tabled so the Committee could review the revisions for discussion next meeting. Mark Porter will monitor S 832. Lisa Fenning and Greg Lunt will monitor the amendments to the Bankruptcy Rules. Paul Pascuzzi will monitor HR 2120. The Legislation Subcommittee will monitor the other items.

The Committee agreed that the bulk sales laws should be abolished. Geraldine agreed to check with her colleague on the UCC Committee regarding the status of its efforts to abolish these laws in California.

11. Other New Business.

Geraldine reported on LawHelpCalifornia.org. This is a State Bar sponsored website. Geraldine was contacted by Susan Orloff inquiring whether the ILC wanted to contribute. Geraldine found out that they were requesting monetary contributions.

Mark Porter suggested that the Committee consider shuffling the agenda order of the subcommittee reports every month so that when time runs short it is not the Legislative Subcommittee's report that is affected. Mark also suggested that members with tasks circulate an email a few days before the meeting to inform the Committee of the status of the task. These items will be discussed at the next meeting on January 16, 2004 at 10 a.m.

12. Adjournment. The meeting was adjourned at approximately 1:15 p.m.

Respectfully submitted,
Paul Pascuzzi